IN RE AN ADVOCATE & SOLICITOR; *Ex Parte* THE LAW SOCIETY OF SINGAPORE FOR JUDICIAL REVIEW

[O.C.J. (Sinnathuray J.) June 26, 1985]

[Singapore – Originating Motion No. 58 of 1984]

[C.A. (Wee Chong Jin C.J., Lai & Thean JJ.) October 29, 1986]

[Singapore – Civil Appeal No. 34 of 1985]

Legal Profession – Disciplinary Proceedings – Conviction of advocate and solicitor – Income tax offence – Composition of other tax offences – Tampering with witness – Information of Attorney-General to Law Society – Inquiry Committee's report – Disciplinary Committee – Six charges against advocate and solicitor – Disciplinary Committee deleting certain paragraphs in Statement of Case of Law Society – Whether Disciplinary Committee must investigate all charges – Judicial review – Application for mandamus – Locus standi – Legal Profession Act (Cap. 217), ss. 84, 85, 86, 87, 88, 89, 90, 91, & 93 – Advocates and Solicitors (Disciplinary Proceedings) Rules, 1963, r.10.

Administrative Law – Disciplinary proceedings – Whether Disciplinary Committee must investigate all charges – Judicial review – Application for mandamus – Locus standi.

This case arose out of a letter dated July 16, 1982, from the Attorney-General to the President of the Law Society of Singapore. The letter gave information under section 86(2) of the Legal Profession Act (the Act) on an advocate and solicitor pertaining to his conviction of an income tax offence in one summons, composition in respect of four other income tax offences, and his tampering with a witness. Eventually, the then President of the Law Society made an order under section 86(2) of the Act, addressed to members of the Inquiry Committee constituted under section 85 of the Act. This Committee made its report under section 87(6) of the Act and was of the view that a formal investigation by a Disciplinary Committee was necessary.

The Council of the Law Society considered the report and applied to the Chief Justice under section 90 for the appointment of a Disciplinary Committee to hear and investigate the matters. The Chief Justice appointed the Disciplinary Committee on October 28, 1983. Before the Disciplinary Committee the advocate and solicitor faced six serious charges which, if made out, may in respect of each charge amount to due cause being shown within the meaning of paragraphs (a), (b) or (h) of sub-section (2) of section 84 of the Act, and may render him liable to be struck off the roll or suspended from practice for any period of not exceeding two years or censured. His counsel successfully applied before the Disciplinary Committee to delete certain paragraphs of the Statement of the Case as formulated by the Law Society. The effect of the deletion would be that charges 3, 4 and 6 and a major portion of charge 2 would not be investigated by the Disciplinary Committee. The Law Society thought that the Disciplinary Committee was obviously wrong and brought proceedings in the High Court for, *inter alia*, an order of *mandamus* directing the Disciplinary Committee to hear and investigate all the six charges formulated by the Law Society and as specified in the Council's Statement of the Case.

The High Court (Sinnathuray J.) granted the orders sought by the Law Society. Being dissatisfied with the decisions of the High Court, the advocate and solicitor appealed to the Court of Appeal.

Held, dismissing the appeal with costs: (1) where the Inquiry Committee is inquiring into any matter which, as in this case, contains several distinct and separate complaints against the conduct of an advocate and solicitor, it is plainly open to the Inquiry Committee to report its findings and in its report to deal with the question of necessity or otherwise of a formal investigation by a Disciplinary Committee in respect of each and every of such distinct and separate complaints comprised in the same matter;

(2) on any view of the report of the Inquiry Committee in this case, it cannot be said that the Inquiry Committee had recommended that no formal investigation by the Disciplinary Committee was required on any one of the several complaints comprised in the matter into which it had carried out the inquiry;

(3) the Council in this case was not under any restriction evident in the report of the Inquiry Committee when formulating the charges for formal investigation by the Disciplinary Committee;

(4) the matters as set out in the deleted paragraphs in the Statement of Case should be investigated by the Disciplinary Committee, which was in no position to decide on any of the questions without hearing evidence;

(5) the Law Society did have the "sufficient interest" and therefore the *locus standi* to apply for *mandamus;*

(6) the *mandamus* should be granted.

Cases referred to:

(1) *Regina* v. *Carden* (1879) 5 Q.B.D. 1.
(2) *In the Matter of an Advocate and Solicitor* [1978] 2 M.L.J. 7.
(3) *Allinson* v. *General Council of Medical Education and Registration* [1894] 1 Q.B. 750.
(4) *In re a Solicitor: ex parte the Law Society* [1912] 1 K.B. 302.
(5) *The Law Society of Singapore* v. *T. T. Rajah* [1973] 1 M.L.J. 79.
(6) *R.* v. *Marsham* [1892] 1 Q.B. 371.
(7) *Inland Revenue Commissioners* v. *National Federation of Self-Employed and Small Businesses Ltd.* [1982] A.C. 617, 630.

HIGH COURT.

C.S. Wu for the Law Society.

Anthony Hidden Q.C. (*T.Q. Lim* with him) for the solicitor concerned.

Jeffrey Chan Wah Teck (Deputy Senior State Counsel) for the Attorney-General.

Cur. Adv. Vult.

Sinnathuray J.: I adopt the opening words of Cockburn C.J. in *Regina* v. *Carden*[1] "This is a case of some importance, but it is, in my opinion, so clear that [I] need not hesitate to give Judgment at once . . . .". In this application the Council of the Law Society of Singapore applies that (1) an order of *mandamus* be issued directing "the Disciplinary Committee appointed by The Honourable The Chief Justice by a formal instrument of appointment dated 28th October 1983 to hear and investigate all the six charges formulated by The Council of the Law Society against Lim Chor Pee, an Advocate and Solicitor, as set out in the Law Society's letter to the said Lim Chor Pee dated 15th October 1983 pursuant to section 88(2) of The Legal Profession Act Cap. 217, and as specified in the Council's Statement of the Case dated 13th March 1984"; and (2) that an order be made setting aside the Order of the Disciplinary Committee made on July 31, 1984 deleting paragraphs 6, 8, 9, 10, 13 and 15 of the Council's Statement of the Case.

That the Council had to make this application to the High Court to obtain an order, for the Disciplinary Committee to do its duty which it had failed to carry out under the Legal Profession Act, is a matter that I view with some concern. That the application should have been necessary is to use the words of Cockburn C.J. again "of a startling nature." The Council was compelled to make this application. It was a necessary application. It could have been avoided by the Disciplinary Committee.

Now, I narrate the events in chronological order. In dealing with the facts, I shall refer to the material provisions of the Legal Profession Act (the Act) as they have to be tied in to the facts. Considered together, the facts and the law confirm the views I have just expressed.

I start at the beginning. There is a letter from the Attorney-General dated July 16, 1982 addressed to the President of the Law Society. I shall read the letter.

"Dear Sir

RE : LIM CHOR PEE

As it is likely that you will be inquiring into the conduct of Lim Chor Pee, I forward herewith the statement of facts that were tendered in court at the trial and the District Judge's comments prior to his passing sentence (Annex A). It contains facts and figures pertaining to his conviction and composition in respect of other offences. I also forward herewith a copy of a report of Keith Tay annexed as 'B' which explains these matters. It would also explain the reasons for the District Judge's comments.

In the course of the trial it also became apparent that Lim Chor Pee 'tampered' with a member of the firm of Coopers & Lybrand in an attempt to conceal the existence in late 1980 of a Chor Pee & Hin Hiong file. This file was in respect of a debenture and mortgage for which a fee was charged by Lim Chor Pee. This fee was omitted from the returns of the firm of Chor Pee & Hin Hiong and formed the subject matter of the charge which he was convicted upon. A report on this matter is annexed as 'C'.

I would be glad to assist you on these matters if you find it necessary.

Yours faithfully

Sgd. GLENN J KNIGHT
for ATTORNEY-GENERAL

Together with this letter are the annexures referred to in the letter.

What information did the Attorney-General give to the Law Society in his letter and annexures? (1) He gave facts pertaining to the conviction of Lim Chor Pee of an income tax offence in one summons. The details are in the statement of facts in one of the annexures; there is also in another annexure the reasons of the learned District Judge in assessing the appropriate sentence in respect of the charge to which Lim Chor Pee had pleaded guilty and was convicted. (2) The Attorney-General gave facts and figures pertaining to Lim Chor Pee's composition in respect of four other income tax offences. Considerable material relating to these other offences are in the report of Keith Tay which is in annexure B. (3) Facts and figures subsequently discovered and not included in the summonses are also referred to in that annexure B. (4) Facts relating to the tampering with the evidence.

It appears from the record of proceedings before the Disciplinary Committee that the Council of the Law Society did not take action on this letter. (See page 83 of the affidavit of Mr. Wu). The letter from the Attorney-General's Chambers was dated July 16, 1982. No written order followed upon that letter. Here I refer to the section pursuant to which the Attorney-General wrote to the Council. It is section 86(2) of the Act, the relevant portion of which reads:

". . . the Attorney-General may at any time refer to the Society any information touching upon the conduct of a

solicitor in his professional capacity and the Council shall issue a written order to the Inquiry Committee."

Be that as it may, on March 2, 1983, about eight months later, the Attorney-General sent a second letter to the President of the Law Society. Again, I will read this letter.

"Dear Sir

INFORMATION FORWARDED UNDER THE PROVISIONS OF SECTION 86(2) OF THE LEGAL PROFESSION ACT (CHAPTER 217) CONCERNING THE CONDUCT OF LIM CHOR PEE, AN ADVOCATE AND SOLICITOR OF THE SUPREME COURT OF SINGAPORE

I have been directed by the Attorney-General to refer to the Society information concerning the conduct of Lim Chor Pee under the provisions of section 86(2) of the Legal Profession Act (Cap. 217) in respect of the following matters.

2. In connection with investigations conducted by the Commercial Crimes Divisions, CID, and the prosecution that followed under the Income Tax Act, the following were disclosed:-

Lim Chor Pee had in manipulating the accounts of the firm of Chor Pee & Hin Hiong, in particular the Disbursements Account sought and succeeded in fraudulently evading the payment of tax. The specific allegations of fraud are contained in a report by Keith Tay, a partner of the firm of Peat Marwick & Mitchell, a copy of which is already with you. The Report specifically avers to –

(a) The falsifying of ledger pages of the Disbursement and other accounts relating to fee income received by the firm of Chor Pee & Hin Hiong for work done in respect of loan agreements entered into by International Holdings, Cho Jock Kim and Banque National De Paris et des Pays Bas (BNP). (Please see the report at pages 7-10). This was done to conceal the fact that the income was not reported to the Comptroller but was expended instead by Lim Chor Pee and Khoo Hin Hiong for personal expenses.

(b) Lim Chor Pee requesting his former accounts clerk, Jeannie Yim, to falsify books of account to cover up the transfer of income to Hong Kong. This was done to assist Khoo Hin Hiong to defraud the tax authorities. (See pages 6 and 7 of the Report).

These two matters were covered by Income Tax Summonses No 50002/80 and 51001-51004/81. They were not withdrawn but were compounded at 3 times the penalty, the same penalties applicable if Lim Chor Pee was convicted under section 96 of the Income Tax Act which makes it an offence to defraud the tax authorities.

(c) Lim Chor Pee transferring fee income to separate ledger accounts to enable personal expenses to be paid from them. Also falsifying the ledgers to cover this. This was done to evade payment of tax on this income and was intended to defraud the tax authorities. This was done in some cases by diverting a percentage of the fee income earned to a travel account and deducting personal and travel expenses of his family. See page 10 para (4) of the Report.

3. The District Judge when sentencing Lim Chor Pee referred to the manipulations of the accounts of the firm by Lim Chor Pee. This was based on evidence led at the trial which included evidence of summonses referred to in paragraph 2.

4. Lim Chor Pee had also in the course of the trial into the Income Tax offences tampered with a prosecution witness, A Report by the Accountant of the Commercial Crimes Division on this matter has already been sent to you.

Yours faithfully

Sgd. GLENN J KNIGHT
for ATTORNEY-GENERAL
SINGAPORE

It was after the Council had received this letter, about four months later, on July 4, 1983, that the then President of the Law Society made an order under section 86(2) of the Act which as I have said provides that the Council shall issue a written order to the Inquiry Committee. For completeness, I will read that order as well.

" 4th July 1983

ORDER UNDER SECTION 86(2) OF THE LEGAL PROFESSION ACT (CHAPTER 217)

WHEREAS by letter dated the 2nd day of March 1983, the Attorney General has referred to the Law Society of Singapore information touching on the conduct of Mr Lim Chor Pee, a solicitor in his professional capacity.

AND WHEREAS the Council has considered the said letter and resolved to issue an order.

NOW THE COUNCIL pursuant to the provisions of section 86(2) of the Legal Profession Act hereby orders that the Inquiry Committee do inquire into and investigate the matter and report to the Council thereon.

Dated this 4th day of July 1983.

Sgd.
T.P.B. MENON"

The order was addressed to the members of the Inquiry Committee constituted under section 85 of the Act. At that time there were 9 of them and their respective names are stated in that order.

Following on the making of the order, in compliance with section 87(5) of the Act, the Chairman of the Inquiry Committee, Mr. C.C. Tan, addressed a letter to Mr. Lim Chor Pee dated July 5. I need not refer to this letter because it is not in

dispute in these proceedings that proper notice of hearing had been given to Lim Chor Pee in compliance with section 87(5).

The Inquiry Committee then commenced its hearing into the matter. What it was required to do is provided in section 87(1) of the Act, the relevant part of which reads:

"Where the Inquiry Committee has received a written order . . . it shall within two weeks commence its inquiry into the matter and report its findings to the Council . . . not later than two months after the commencement of such inquiry."

It is sufficient to say that the Inquiry Committee met on three occasions and that they made a report. The Inquiry Committee has to make its report under section 87(6) of the Act. It provides:

"The report of the Inquiry Committee shall, *inter alia*, deal with the question of the necessity or otherwise of a formal investigation by a Disciplinary Committee . . . "

This is what the Inquiry Committee did. The report, (exhibit "CSW 6" in the affidavit of Mr. Wu), covers 15 pages. The report is signed by the Chairman of the Inquiry Committee, Mr. C.C. Tan. We all know he is one of the most senior members of the Bar. And, as I said in the course of argument, he is a member of the Bar who has been actively interested in the profession for many years; as I recall, no less than 30 years. He has been more than once Chairman of the Bar Committee of Singapore and President of the Law Society as well.

I shall now summarise this report of the Inquiry Committee.

Paragraphs 1 to 21, as I understand them, set out two things. First, they report on the steps that had been taken by the Committee in the hearing of the matters that had been placed before the Inquiry Committee, that is to say, the information contained in the two letters sent by the Attorney-General. Secondly, they narrate the facts relating to the subject matter of the inquiry. For instance, at page 1, the report states that the inquiry had before it certain documents, those that had been referred to in the Attorney-General's letters. Another paragraph sets out what had happened as regards the summonses that had been issued against Lim Chor Pee in the Subordinate Courts, what the summonses were about and how they had been dealt with. Another matter that is specifically referred to in one of these paragraphs, paragraph 19, is that in the course of the hearing the Chairman wrote to Mr. Keith Tay, whose report is in annexure B of the letter of the Attorney-General enquiring from him of some matters in the accounts of Lim Chor Pee.

Then comes paragraph 22 relied upon by Mr. Hidden Q.C. at the hearing before the Disciplinary Committee for the respondent, Lim Chor Pee. This paragraph starts off with these words "The allegations against the respondent which the Committee considered as relevant to a hearing under section 87 of the Legal Profession Act are as follows." I would underline the words "relevant to a hearing under section 87." The section is the section I mentioned earlier which deals with matters relating to the inquiry by the Inquiry Committee. In this paragraph the Committee itemised various allegations against the respondent. They cover (a) to (g), they contain information given to the Inquiry Committee.

Next, paragraphs 23 to 25, as I understand them, set out in summary the explanations given by the respondent on the allegations made against him referred to in the earlier paragraph.

Then comes, to my mind, the crucial paragraph. In paragraph 26 the Committee stated:

"The Committee is not satisfied that the explanations and denials by the respondent are by themselves a sufficient answer to the allegations brought against him by the Attorney-General."

In paragraph 27, the Committee elaborated on paragraph 26. I will read the relevant part:

"The issue between the Attorney-General and the respondent cannot be fully resolved in such an Inquiry, as the evidence produced by both sides has made the matter sufficiently contentious, complex and equivocal for the Committee to decide that formal investigation by a Disciplinary Committee is necessary. As soon as it comes to such a decision, the Inquiry Committee should not go any further and should report in the affirmative under section 87(6) of the Act and leave further action in the matter to the Council of the Law Society."

The Inquiry Committee then concluded in paragraph 28:

"The Committee, therefore, is of the view that a formal investigation by a Disciplinary Committee is necessary and so recommends."

Finally, there is paragraph 29 on which much has been said in this hearing. In it the Inquiry Committee said:

". . . it is also of the view that in a case where an advocate and solicitor has been charged in Court with an offence

involving fraud or dishonesty and such charge is compounded by the Public Prosecutor in consideration of the accused pleading guilty to a lesser charge . . . . . which does not involve allegations of fraud, then the Council should be empowered under section 86(5) of the Act to apply forthwith to the Chief Justice to appoint a Disciplinary Committee. It is a waste of valuable time to have to submit such a case to the Inquiry Committee under the provisions of section 86 of the Act and furthermore, the advocate and solicitor in question should be spared the agony of having to undergo an inquiry before the Inquiry Committee and then before a Disciplinary Committee where the same grounds, both of the complaint and defence, have to be gone through all over again."

So much for the report of the Inquiry Committee. I pause here to refer to the other options the Inquiry Committee has when it has to under the written order "deal with the question of the necessity or otherwise of a formal investigation by a Disciplinary Committee". Under section 87(6) of the Act:

" . . . if in the view of the Inquiry Committee no formal investigation by a Disciplinary Committee is required, the Inquiry Committee shall recommend to the Council –

(a) a penalty sufficient and appropriate to the misconduct committed; or

(b) the dismissal of the complaint."

It is clear from the report of the Inquiry Committee that it could not resort to one or other of the two alternatives I have just mentioned. In very unequivocal terms, the Inquiry Committee said that it was of the view that a formal investigation by a Disciplinary Committee is necessary in respect of the allegations brought against Lim Chor Pee by the Attorney General.

The next step envisaged in the Act in relation to disciplinary proceedings is that under section 88(1) of the Act the Council shall consider the report of the Inquiry Committee and determine one of four courses. That was the law until 1979, but in that year, by Act No. 11/79 section 88 was amended by the addition of subsection (1A). In my opinion, the amendment that Parliament made in 1979 is vital to the consideration of the arguments before me in this application. At this point, I need only refer to paragraph (a) of subsection (1A) of the Act. It states:

"(1A) – If the Inquiry Committee in its report recommends –

(a) that there should be a formal investigation, then the Council shall determine accordingly under subsection (1)."

So the position now is this: Where the Inquiry Committee in its report recommends that there should be a formal investigation under section 88(1), the Council shall after considering the report order that a formal investigation be held by the Disciplinary Committee. It is not in dispute in this case that it was mandatory for the Council to take steps for a formal investigation by a Disciplinary Committee. That was what the Council did.

The appointment of a Disciplinary Committee is in the hands of the Chief Justice. Section 90 of the Act provides:

"If the Council determines under section 88 that there should be a formal investigation the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter."

So it was that on October 14, 1983 the President of the Law Society wrote to the Hon'ble the Chief Justice as follows:

"Dear Chief Justice,

I have to inform your Lordship that a complaint has been made against Mr. Lim Chor Pee which has been investigated by the Inquiry Committee. On the report of the Inquiry Committee the Council has determined that there should be a formal investigation by a Disciplinary Committee into Mr. Lim Chor Pee's conduct. Mr. Lim is practising in partnership under the firm name of 'Chor Pee & Co.' and I attach hereto for your Lordship's information a brief resume of the charges against him.

Accordingly, I am applying to your Lordship under Section 90 of the Legal Profession Act for the appointment of a Disciplinary Committee to hear and investigate the matter.

Yours sincerely,
(Sgd.)
(T.P.B. Menon)"

On the next day, October 15, 1983, in compliance with section 88(2) of the Act, the Executive Secretary of the Law Society addressed a letter to Lim Chor Pee confirming that pursuant to section 88(1)(c) of the Act the Council has determined that there should be a formal investigation by a Disciplinary Committee into the complaint against him and the letter set out in six paragraphs the allegations of which the Chief Justice had been informed the day before.

On October 28, 1983, the Chief Justice made the appointment pursuant to section 91 of the Act. He appointed Mr. Tan Tee Seng, Mr. Tan Wee Kian and Mr. Allen Yau members of the Disciplinary Committee to hear and investigate the complaint against Lim Chor Pee. I see from the transcript of the report of the Disciplinary Committee that Mr. Tan Tee Seng was the Chairman of the Disciplinary Committee.

Before I consider what happened before the Disciplinary Committee, it is appropriate that I should refer to section 93(1) of the Act which provides what the Disciplinary Committee has to do. It reads as follows:

"After hearing and investigating any matter referred to it a Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine –

(a) that no cause of sufficient gravity for disciplinary action exists under section 84;

(b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded; or

(c) that cause of sufficient gravity for disciplinary exists under that section."

At the hearing before the Disciplinary Committee, Mr. Wu was instructed by the Law Society and Mr. Hidden Q.C. appeared for Lim Chor Pee. On the first day of the hearing on July 30, 1984, soon after Mr. Wu had introduced himself, Mr. Hidden raised a preliminary point. His submission was that the Statement of Case before the Disciplinary Committee should be amended by the deletion of paragraphs 6, 8, 9, 10, 13 and 15 and that the hearing should continue with the remaining paragraphs. The basis for his application is to be found at page 10 of the record of proceedings of the Disciplinary Committee. Mr. Hidden emphasised that "what we are going to see in paragraph 22 [of the Report of the Inquiry Committee] is the allegations the Inquiry Committee were recommending investigation of by the Disciplinary Committee." That was the foundation of his submission before the Disciplinary Committee and the same has been repeated and elaborated upon at this hearing before me.

As one reads through the record of proceedings of the Disciplinary Committee, one sees again and again the point being made that the matters inquired into by the Inquiry Committee set out in paragraph 22 are the matters that the Disciplinary Committee sits to investigate. For instance, at page 12 there is the submission that the allegations before the Disciplinary Committee must be the allegations referred to as allegations in paragraph 22. In referring to one of the charges before the Disciplinary Committee, at page 16 Mr. Hidden said that the Disciplinary Committee "will look in vain to find that allegation in the Inquiry Committee's report. It is simply not there, and as it is not there in my respectful submission it cannot properly be in the Statement of Case. This Committee is not seised of the matter and cannot inquire into it . . . " Again, at page 17 he made the point that "an allegation which was not considered relevant [by the Inquiry Committee] should not be before this Committee and should be deleted from the Statement of Case".

So, the submission for the respondent was that only the specific allegations referred to by the Inquiry Committee in paragraph 22 of the Committee's report are to be investigated into by the Disciplinary Committee and that the Disciplinary Committee may not hear and investigate into any other matters. Mr. Hidden then went through the Statement of Case before the Disciplinary Committee and urged upon the Committee to delete the paragraphs I have mentioned.

Mr. Wu, on the other hand, raised the following argument before the Disciplinary Committee. He referred the Committee to paragraph 27 of the Report of the Inquiry Committee which I have already mentioned. He pointed out to the Committee the statutory duties of the Inquiry Committee under section 87(6) of the Act, that the sole duty of the Inquiry Committee was to "inquire" and "report" to the "Council" whether or not there should be a hearing and an investigation into the complaint before the Inquiry Committee by the Disciplinary Committee. He drew the attention of the Disciplinary Committee to the recommendation of the Inquiry Committee that there be an investigation into the conduct of the respondent. He submitted, in my view, correctly that there is no provision anywhere in the Act which stipulates that it is the function of the Inquiry Committee to frame or settle charges to be preferred against the respondent before the Disciplinary Committee. And he said again correctly, in my view, there is no provision in the Act empowering the Inquiry Committee to restrict the jurisdiction of the Disciplinary Committee. The functions of the two Committees, it was correctly pointed out, were quite distinct and separate. Here he drew the attention of the Committee to another amendment made in 1979 to section 88. Paragraph (b) of subsection (1A), which I left out earlier, provides that even if the Inquiry Committee in its report does not recommend that there should be a formal investigation by the Disciplinary Committee, the Council is empowered to disagree with the recommendation and the Council may request the Chief Justice to appoint a Disciplinary Committee. As I view it, this provision clearly distinguishes the two Committees. If Mr. Hidden is right that only those allegations contained in paragraph 22 of the

report of the Inquiry Committee can be heard and investigated upon by the Disciplinary Committee, then putting it bluntly it would make nonsense of this statutory provision that the Council can altogether disagree with the Inquiry Committee and request the Chief Justice to appoint a Disciplinary Committee. In this case, the Disciplinary Committee was to hear and investigate the complaints contained in the two letters of the Attorney-General. In this case, the Inquiry Committee had recommended that there be formal investigation into those complaints.

Here it is relevant to refer to the case of *In the Matter of an Advocate and Solicitor.*[2] It answers more than one argument of Mr. Hidden. First, there is his criticism on the use of the word "charge" by the President of the Law Society in his letter to the Chief Justice where he wrote: "I attach hereto . . . a brief resume of the charges" against the respondent. Mr. Wu, too, has used the word "charge" in referring to the allegations made against the respondent. The other is a technical argument by Mr. Hidden on the word "matter" as it appears in section 88(1) of the Act.

Taking this last argument first, I am not persuaded that the word "matter" in section 88(1) is in the context used otherwise than the word "matter" appearing in section 86(4) and section 87(1). I am satisfied that the word "matter" in sections 86(4), 87(1) and 88(1) must be given the same meaning, and that meaning to my mind is clear. It means any "matter" under section 86(1) and (2) of the Act which the Council by a written order refers to the Inquiry Committee.

In the case of *In the Matter of an Advocate and Solicitor,* Wee Chong Jin C.J., Chua and Rajah JJ. inquired into a show cause action. They said at page 11 that by virtue of section 88 of the Act, "it is the Council of the Law Society that formulates charges against an advocate and solicitor . . . ". So, it is not wrong to use the word "charge" to refer to an allegation of misconduct against an advocate and solicitor. And, as I said earlier, Mr. Wu was right in submitting to the Disciplinary Committee that it is not the function of the Inquiry Committee to draft charges against an advocate and solicitor. It is the Council that does that.

There is another *dictum* in the judgment I want to refer to. The Court said, also at page 11, "that under section 93(1) of the Act a Disciplinary Committee appointed by the Chief Justice can only investigate matters referred to it by the Council . . ." I would now add to that that the Disciplinary Committee cannot refuse to hear and investigate matters properly referred to it by the Council.

Reverting back to the Disciplinary Committee, on the submissions before it, the Committee having deliberated on them, ruled:

"We have carefully considered the application of the respondent to amend the allegations in the Statement of Case together with the submission of his Counsel and the submission of Counsel for the Law Society. We allow the application. Now the Statement of the Case will accordingly be amended by the deletion of paragraphs 6, 8, 9, 10, 13, and 15."

The Disciplinary Committee amended the Statement of Case under Rule 10 of the Advocates and Solicitors (Disciplinary Proceedings) Rules, 1963.

What followed after that was that the Committee would not review its decision. Mr. Wu directed the Disciplinary Committee to the following facts. He told the Committee that the Statement of Case was settled by him on the basis of the charges that had in fact been framed by the Council. He asked for an adjournment to take instructions from the Council. Very properly Mr. Hidden did not object to the adjournment and it was granted.

Next day, when Mr. Wu appeared before the Disciplinary Committee, he said "I feel constrained to submit that, with the greatest respect, the decision made yesterday was *ultra vires* your functions." A comment is made by Mr. Hidden on this submission that what should have been sought was an order of prohibition and not an order of *mandamus.* However, I accept that what Mr. Wu said, by the use of the words "*ultra vires* the functions" was that it was not part of the duty of the Committee to amend the Statement of Case, that it should not have acceded to the submission made by Mr. Hidden. Mr. Wu told the Committee that he had instructions to apply for an order of *mandamus.* He then sought to make a submission on the order that had been made. I see from the record of proceedings that the Disciplinary Committee said "we are not prepared to hear you at this stage on whether or not the order we have made is correct . . . we are certainly not prepared to reconsider our decision . . . what do you propose to do now?" Then Mr. Wu, to my mind, raised a very pertinent point. He drew the attention of the Disciplinary Committee that as a result of the amendment three and a half charges set out in the Statement of Case had been struck out and that if he was to proceed now with the remaining charges, leaving aside other difficulties, later if it

should transpire that the Council would want to proceed against Lim Chor Pee on the charges that had been struck out, then a situation may arise of allegation of oppression and abuse of process against Lim Chor Pee. He explained to the Disciplinary Committee that the *mandamus* proceedings were not directed against the charges which remain but were directed against the charges that had been struck out. He said "I cannot risk proceeding with these proceedings and later on to have to proceed with another set of proceedings with the remaining charges because that will give rise to an oppressive situation, which is the very situation that is presently pending decision by the Privy Council." He told the Disciplinary Committee "You are entitled to hear me further if you are so disposed." He was stopped by the Chairman. "For what purpose, Mr. Wu?" Mr. Wu: "To show . . . to you my grounds for submitting that your decision yesterday was *ultra vires.*" Chairman: "No, you cannot say that." Thus the hearing ended with the Disciplinary Committee granting the adjournment upon the undertaking by Mr. Wu within the period he had given to the Disciplinary Committee to make this application to the High Court. Leave to issue was granted by the learned Chief Justice on August 10, 1984.

In dealing with the facts in the way I have done, I think I have sufficiently covered the grounds on which this application is made for an order of *mandamus* against the Disciplinary Committee. I have also dealt with the submissions made to the Disciplinary Committee which led the Disciplinary Committee to strike out the paragraphs of which complaint is now made by the Council. The submission for the Law Society is that the striking out of those paragraphs was not within the power of the Disciplinary Committee, for its duty was to hear and investigate into matters referred to it by the Council. I will read the summary of the written argument of Mr. Wu.

"CONTENTIONS ON BEHALF OF THE LAW SOCIETY

1. It is not the purpose of the Act that the Inquiry Committee should duplicate the functions of the Disciplinary Committee. Under section 87(6), the Inquiry Committee's report deals, *inter alia*, with the question of the necessity or otherwise of a formal investigation by a Disciplinary Committee.

2. Once the Council determines under section 88 that there should be a formal investigation by a Disciplinary Committee, it is the Council's duty to formulate the charges against the Advocate and Solicitor concerned: *In the Matter of Advocate and solicitor* [1978] 2 M.L.J. pg 7.

3. Under section 93(1), it is the duty of the Disciplinary Committee to hear and investigate 'any matter referred to it.' Under sub-section (3), the Committee then draws up its findings and determination in a report which is submitted to the Chief Justice and the Law Society. It is submitted that the Committee has no jurisdiction either to enlarge on or reduce the charges formulated by the Council and referred to the Committee for investigation. Any attempt in this direction is *ultra vires* the Committee's statutory function.

4. Rule 10 of The Advocate and Solicitors (Disciplinary Proceedings) Rules 1963 does not empower the Advocate and Solicitor concerned to apply to amend the Council's Statement of the Case. The Committee's decision to delete paragraphs 6, 8, 9, 10, 13 and 15 of the Council's Statement of the Case without the consent of the Council amounts to a refusal by the Committee to investigate the charges formulated by the Council to which these paragraphs relate. Such refusal by the Committee amounts to a refusal to discharge fully its investigative responsibilities under section 93(1) of the Act ...."

That I think sufficiently covers the submissions made for the Council.

Now I want to say a few words on the submission of Mr. Hidden on section 87(6) of the Act. He said in considering the question of the necessity or otherwise of a formal investigation by a Disciplinary Committee, the Inquiry Committee can come to one of three conclusions: (1) that there be an investigation into everything that is before them; (2) that there be no formal investigation into any of them; or (3) that there be investigation into some and not all of them. With respect, on the facts before me, I cannot accede to that submission. To my mind, under section 87(6) of the Act, the sole function of the Inquiry Committee was to consider the matters before it and answer the question whether or not there should be a formal investigation into them by a Disciplinary Committee. In this case the Committee had no doubts in the matter. The Committee was clearly of the view that a formal investigation by a Disciplinary Committee was necessary in respect of the complaints made against Lim Chor Pee by the Attorney-General.

It remains only for me to say that I do not accept the submission of Mr. Hidden that only those allegations itemised in paragraph 22 of the report of the Inquiry Committee are to be investigated by the Disciplinary Committee. In my view, paragraph 22 does not seek to deal exhaustively with the matters that were before the Inquiry Committee. To see what the matters were, one must look at the report as a whole. So, the foundation of the argument for the respondent before the Disciplinary Committee and reinforced before me is, with due respect, without merit. To my mind,

when the report is considered as a whole, the conclusion of the Inquiry Committee is in paragraph 27. The Committee said that the issue between the Attorney-General and the respondent cannot be resolved in this inquiry, that the evidence produced by both sides has made the matter sufficiently contentious, complex and equivocal and therefore there should be a formal investigation by a Disciplinary Committee. The Disciplinary Committee was appointed by the Chief Justice. In my opinion it was the duty of the Disciplinary Committee to hear and investigate the charges properly before the Committee in the Statement of Case.

For all these reasons, an order of *mandamus* must be issued. There will be costs to the applicant inclusive of the costs for leave to issue *mandamus*.

[*The advocate and solicitor appealed against the above decision to the Court of Appeal.*]

COURT OF APPEAL.

Jules Sher Q.C. (*T.Q. Lim* with him) for the appellant.

C.S. Wu for the respondent.

Jeffrey Chan Wah Teck (Deputy Senior State Counsel) for the Attorney-General.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): The appellant, an advocate and solicitor, faced six serious charges before the Disciplinary Committee which, if made out, may in respect of each charge amount to due cause being shown within the meaning of paragraphs (a), (b) or (h) of sub-section 84(2) of the Legal Profession Act, Cap. 217 ("the Act") and may render him liable to be struck off the roll or suspended from practice for any period not exceeding two years or censured. When he appeared before the Disciplinary Committee, his counsel successfully applied to delete paragraphs 6, 8, 9, 10, 13 and 15 of the Statement of the Case as formulated by the Council of the Law Society of Singapore ("the Law Society"). The effect of the decision of the Disciplinary Committee in deleting the said paragraphs would be that charges 3, 4 and 6 and a major portion of charge 2 as numbered and formulated by the Law Society, the details of which we will later set out, would not be investigated by the Disciplinary Committee.

The Law Society thought that the Disciplinary Committee was obviously wrong and instituted proceedings in the High Court for (a) an order of *mandamus* directing the Disciplinary Committee to hear and investigate all the six charges formulated by the Law Society and as specified in the Council's Statement of the Case; (b) an order setting aside the said decision of the Disciplinary Committee; and (c) an order that the appellant pay the costs of those proceedings. The High Court made the orders sought by the Law Society. Being dissatisfied with the decisions of the High Court, the appellant brought this appeal.

In 1978 the police and tax authorities carried out investigations of the firm of Chor Pee & Hin Hiong ("the firm") in which the appellant was the precedent partner. In May 1981 the appellant was tried on six income tax summonses which related to the wilful evasions of the sum of $85,000 being fees earned in 1971 and the sum of $90,000 being fees earned in 1973. The summonses also related to the appellant's falsification of the relevant accounting records connected with those two sets of fees earned. The last and least serious income tax summons alleged that the appellant had without reasonable excuse made an incorrect income tax return by omitting the income from the said fee of $85,000 in the Year of Assessment 1972.

In the midst of his trial in the District Court, the appellant successfully negotiated with the prosecution resulting in the Public Prosecutor's consent to the compounding of four charges which involved allegations of fraud. In respect of these four compounded charges the appellant paid the tax and penalties for himself and his partner which totalled $392,638.16. Another of the six income tax summonses was withdrawn by the prosecution. That left the last, being the least serious charge to which the appellant, as agreed with the prosecution, pleaded guilty. He was convicted and fined the maximum of $5,000 and was ordered to pay the penalty of $84,854.40.

After the conclusion of the prosecutions in the District Court the Attorney-General acted under section 86(2) of the Act. By a letter July 16, 1982 to the Law Society, the Attorney-General sent information touching upon the conduct of the appellant in a professional respect and referred to the trial, the appellant's compositions of the income tax offences involving fraud and the conviction of the appellant. The Attorney-General also enclosed the statement of facts which the appellant had agreed, the comments of the District Judge who convicted the appellant and the report of a public accountant, Mr. Keith Tay, who opined as an

expert on how the fraudulent evasions were effected by the appellant and on the appellant's fraudulent manipulations of the accounts of the firm. The Attorney-General also alleged that the appellant had tampered with a prosecution witness.

For some reason not disclosed to us the Council of the Law Society did not, as it was plainly required to do by section 86(2) of the Act, issue a written order to the Inquiry Committee to inquire into the conduct of the appellant. Not eliciting any response from the Council of the Law Society, the Attorney-General wrote again in March 1983 and set out specifically the alleged fraudulent conduct of the appellant and the alleged tampering of a prosecution witness. Four months later, the Council of the Law Society issued the written order and the matter was referred to the Inquiry Committee.

The relevant and one of the principal statutory duties of the Inquiry Committee is set out in section 87(1) of the Act, the relevant parts of which read as follows:

"Where the Inquiry Committee has received a written Order . . . it shall within two weeks commence its inquiry into the matter and report its findings to the Council . . . not later than two months after the commencement of such inquiry."

What the report of the Inquiry Committee has to deal with is also set out in section 87(6) of the Act as follows:

"The report of the Inquiry Committee shall, *inter alia*, deal with the question of the necessity or otherwise of a formal investigation by a Disciplinary Committee . . . "

Section 87(6) of the Act also sets out what the Inquiry Committee shall recommend to the Council of the Law Society if it is of the view that formal investigation by a Disciplinary Committee is not required. It provides:

". . ., if in the view of the Inquiry Committee no formal investigation by a Disciplinary Committee is required, the Inquiry Committee shall recommend to the Council –

(a) a penalty sufficient and appropriate to the misconduct committed; or

(b) the dismissal of the complaint."

The Inquiry Committee duly conducted its inquiry into the information furnished by the Attorney-General and in due course it submitted a written report to the Council of the Law Society. It was a full and carefully written report. It referred to the information and documents sent by the Attorney-General against the appellant, the six income tax summonses with which the appellant was charged and tried in the District court, four of which involved allegations of fraud, and the fact that these four summonses were compounded by the appellant as a result of which no further order thereon was made by the District Judge.

The report must be read as a whole. Since the principal arguments of the appellant which were canvassed before the Disciplinary Committee, the High Court and before us concerned the fundamental question as to what was precisely decided by the Inquiry Committee, we are of the view that paragraphs 22 to 28, both inclusive, of the report should be reproduced. They are as follows:

"22. The allegations against the Respondent which the Committee considered as relevant to a hearing under Section 87 of the Legal Profession Act are as follows:

(a) In September 1971 the firm of CP & HH rendered a bill against Hotel Enterprises (Pte.) Ltd. (HEL) for the sum of $160,209-50 in respect of costs for work done and disbursements relating to a mortgage of HEL's property in favour of First National City Bank to secure the repayment of a loan of $15,000,000/- to HEL and the sum of $160,209-50 billed by CP & HH included a sum of $85,000/- for profit costs. This sum was paid in October 1971 by a Cashier's Order for the total sum billed and was paid into the 'D' Account of CP & HH, an account kept in respect of disbursements.

(b) The sum of $85,118/- was transferred to the 'P' Account of CP & HH (an account maintained for fees and costs) in January 1974 but it was reversed by an entry purported to be dated 6.1.74 of the same sum in the debit column in the 'P' Account under the notation "Error Correction – West Tumasek A/C". This entry would have the effect of reducing the 'P' Account by this sum of $85,118/-. Although this item was purported to be dated 6th January 1974, attention was drawn to the fact that it appeared above the first line of page 292 of the Ledger and it was alleged that this entry was made between 21.1.74 and 30.1.74 (see pages with block numbers 7 and 17 in the Final Report). All references to pages in brackets hereinafter appearing are references to the block numbering in the Final Report.

(c) Against the above debit entry of $85,118/- there were on 20.11.74 entered into the 'P' Account two credit items of advances from West Tumasek of $42,559/- each (see pp. 53 & 63) which two sums make the total of $85,118/- and contraed 'the Error Correction' debit item but had the effect of rendering the 'P' Account subject to a loan of $85,118/- from West Tumasek – a dummy company formed by the Respondent and his partner Khoo Hin Hiong.

(d) (i) On 24th January 1975, two cheques were issued by CP & HH for $42,559/- each, one in favour of the Respondent and the other in favour of Khoo Hin Hiong and receipts dated 25.1.75 were made out in their respective names. The two cheques were paid into the American Express International Banking Corporation Account of CP & HH and given one single credit item of $85,118/- on 27.1.75 (see p. 76). The receipt

for this payment also dated 27.1.75 was issued in respect of the 'P' Account to FNCB (see p. 77). Two receipts in respect of the "P" Account dated 25.1.75 for $42,559/- each were also issued by CP & HH (see pp. 79 & 80).

(ii) There appeared in the 'D' Account under 'West Continental Sdn. Bhd.' the receipt of two sums of $42,559/- each from CP & HH both dated 25.1.75 (see p. 27).

(e) These debit and credit entries of the significant sum of $85,118/- whether as one item or split into two equal sums were made to confuse and bury the traces of the profit costs of this sum paid by HEL.

(f) Another allegation against the Respondent was that out of the sum of $90,000/- received by CP & HH from Cho Jock Kim and International Holdings for fees in relation to work done in respect of a loan from Banque Nationale De Paris Et Des Pays-Bas, a sum of $30,000/- was transferred back from the 'P' Account and described as a refund. This sum was in fact used for distribution between the Respondent and Khoo Hin Hiong.

(g) It was also alleged that he tampered with a prosecution witnes. Doris Patricia Lim, an audit assistant of Coopers & Lybrand, who were in November 1980 asked to do a special audit of the clients' account of CP & HH. During the course of the trial of 6 Summonses and charges brought against the Respondent in the District Court in May 1981, it was alleged by this witness in Court under oath that the Respondent tried to coach her as to the evidence which she should give at the trial.

23. The Respondent has given his explanation to the allegations of falsifying the accounts in his reply which has been compiled in a bundle attached to his letter dated 11th May 1983. He has also submitted further explanations contained in the following:

(a) Letter from the Respondent dated 27th July 1983 and enclosures;

(b) Letter of 2nd August 1983 from his solicitor, Mr. T.Q. Lim, enclosing statement by Messrs. Foo, Hon & Tan, Public Accountants.

(c) Letter from the Respondent dated 12th August 1983;

(d) Written submission by the Respondent dated 12th August 1983; and

(e) Letter dated 15th August 1983 from the Respondent.

24. With regard to the transfers and reversals and re-transfers of entries alleged by the Complainant, the Respondent has, in addition to his submissions and explanations made before the final hearing on 13th August 1983, sent in the final submission dated 15th August 1983 in which he has given his reasons for the entries. A copy of this letter dated 15th August 1983 is attached to this Report.

25. In reply to the allegation of tampering with the witness for the prosecution, the Respondent admitted that he spoke to Doris Patricia Lim before the trial of the Summonses at a time when he did not know that she was to be a witness for the prosecution. He denied that he tried to coach the witness as to what she should say in court.

26. The Committee is not satisfied that the explanations and denials by the Respondent are by themselves a sufficient answer to the allegations brought against him by the Attorney-General.

27. As pointed out in another case, the scope of the jurisdiction of the Inquiry Committee is very limited in a case of this kind. The Committee has under Section 87(6) of the Legal Profession Act to deal with the necessity or otherwise of a formal investigation by a Disciplinary Committee. The issue between the Attorney-General and the Respondent cannot be fully resolved in such an Inquiry, as the evidence produced by both sides has made the matter sufficiently contentious, complex and equivocal for the Committee to decide that formal investigation by a Disciplinary Committee is necessary. As soon as it comes to such a decision, the Inquiry Committee should not go any further and should report in the affirmative under Section 87(6) of the Act and leave further action in the matter to the Council of the Law Society.

28. The Committee, therefore, is of the view that a formal investigation by a Disciplinary Committee is necessary and so recommends."

The Inquiry Committee felt constrained in the light of its vast experience to suggest that the Act ought to be amended to give it in the appropriate cases more time to carry out its statutory duties. In particular, it also suggested that the Inquiry Committee stage of the disciplinary proceedings was totally unnecessary in the case where an advocate and solicitor has been charged in court with an offence involving fraud or dishonesty and such charge is compounded by the Public Prosecutor. In paragraph 29 of the report, the Inquiry Committee stated:

". . . , it is also of the view that in a case where an advocate and solicitor has been charged in Court with an offence involving fraud or dishonesty and such charge is compounded by the Public Prosecutor in consideration of the accused pleading guilty to a lesser charge (under Summons No. 51005/81 in this case) which does not involve allegations of fraud, then the Council should be empowered under section 86(5) of the Act to apply forthwith to the Chief Justice to appoint a Disciplinary Committee. It is a waste of valuable time to have to submit such a case to the Inquiry Committee under the provisions of Section 86 of the Act and furthermore, the advocate and solictior in question should be spared the agony of having to undergo an inquiry before the Inquiry Committee and then before a Disciplinary Committee where the same grounds, both of the complaint and defence, have to be gone through all over again."

Since the Inquiry Committee in its report had recommended that there should be a formal investigation, the Council of the Law Society was

required by section 88(1A)(a) of the Act to determine that there should be a formal investigation by a Disciplinary Committee. The Council had no discretion to act otherwise.

On October 14, 1983 the President of the Law Society accordingly wrote to the Chief Justice to appoint a Disciplinary Committee under section 90 of the Act. A resume of the charges against the appellant was sent to the Chief Justice. The resume of the charges against the appellant was in the following terms which, in our view, correctly summarised the information sent by the Attorney-General:

"LIM CHOR PEE

1. He manipulated the accounts of the firm of Chor Pee & Hin Hiong in particular the disbursements account and succeeded in fraudulently evading the payment of tax.

2. He falsified the ledger pages of the disbursement and other accounts relating to the fee income received by the firm of Chor Pee & Hin Hiong for work done in respect of loan agreements entered into by International Holdings Ltd., Cho Jock Kim and Banque Nationale De Paris et des Pays-Bas (BNP).

3. He requested his former accounts clerk Jeannie Yim to falsify books of accounts to cover up the transfer of income to Hong Kong to assist Khoo Hin Hiong to defraud the tax authorities.

4. He falsified the ledgers and transferred fee income to separate ledger accounts to enable personal expenses to be paid from them with the intention of defrauding the tax authorities.

5. He tampered with a prosecution witness during the course of the trial into the income tax offences.

6. He was convicted under Section 95(2)(a) of the Income Tax Act (RS(A)1/76) in Income Tax Summons 51005/81 and fined $5,000."

On October 28, 1983 the Chief Justice appointed Messrs Tan Tee Seng, Tan Wee Kian and Allen Yau as members of the Disciplinary Committee to hear and investigate the information alleged by the Attorney-General against the appellant. Mr Tan Tee Seng was appointed the Chairman of the Disciplinary Committee. Following the appointment of the Disciplinary Committee copies of the formal application and the prescribed Statement of the Case specifying the allegations made against the appellant were forwarded by the Law Society to the Disciplinary Committee and the appellant as required by rule 2 of The Advocates and Solicitors (Disciplinary Proceedings) Rules, 1963.

Since several paragraphs of the Statement of the Case against the appellant had been deleted by the Disciplinary Committee, we should set them out in some detail. We should preface it by a short description of the accounting records of the firm. The accounting records were kept in three main categories, namely "C" account books, "D" account books and "P" account books. The "C" account books related to clients' accounts and were the accounting records which were required to be maintained under the Solicitors' Accounts Rules to record all the transactions involving clients' accounts. The "D" account books purported to record all monies received by the firm to account of disbursements. In addition to disbursements it appeared that from time to time professional fees received by the firm were also credited to the "D" account books. The "P" account books comprised, amongst others, the general ledger and cash book for the office bank account, including recording the profit costs which made up the firm's gross earnings.

The Law Society's allegations against the appellant are these. It is alleged in paragraph 4 of the Statement of the Case that in October 1971 the firm earned and received the sum of $85,000 comprised in a Cashier's Order for the larger sum of $160,209.50 which the firm received in settlement of its fee note dated September 20, 1971. It is further alleged that the appellant caused the Cashier's Order to be credited to the firm's "D" accounts, and that he omitted transferring to the firm's "P" accounts the said profit costs of $85,000.

By paragraph 5 of the Statement of the Case it was separately alleged that the profit costs of $85,000 was omitted from the firm's income tax returns and that by doing so the appellant had wilfully evaded the payment of income tax chargeable to him and his then partner Khoo Hin Hiong for the Year of Assessment 1972.

By paragraph 6 of the Statement of the Case, which, it will be recalled, the appellant sought to strike out from the case against him, it was alleged that in 1973 another profit costs of $90,000 earned by the firm was wilfully omitted from the income tax returns of the firm and that therefore the appellant had wilfully evaded payment of income tax.

The next allegation in paragraph 7 of the Statement of the Case concerned another instance of wilful evasion of income tax in relation to the sum of $30,000. This sum was transferred from the firm's fee income in the "P" accounts to the firm's

"D" accounts and it was alleged that the appellant had falsely described the transfer as a "refund" when, in truth and in fact according to the Law Society, the sum of $30,000 was used for payment of the personal bills of the appellant and his partner which were improperly debited to the ledger of a client.

The transaction described above led, it was alleged, to the appellant rewriting the accounting records in the fraudulent manner as set out in paragraph 8 which the appellant sought to strike out.

According to the Law Society, the appellant and his partner in 1973 again evaded income tax on the sum of $34,686.93 which, on the instructions of the appellant, was remitted to Hong Kong. The book entries were made by the firm's then accounts clerk, one Jeannie Yim. Paragraph 9 of the Statement of the Case further contained the allegation that in 1978 the appellant requested the said Jeannie Yim (who had left the firm's employment) to falsify and record a fictitious transaction in order to conceal the earlier remittance to Hong Kong. Paragraph 9 was deleted by the Disciplinary Committee.

The next allegation in paragraph 10 of the Statement of the Case related to unlawful debits to the firm's "D" accounts which were made over the years from 1973 and 1977, both years inclusive, to fraudulently reduce the income tax liability of the firm. The appellant compounded the offences thereby committed under section 96(1)(a) of the Income Tax Act, Cap. 141 and it was the contention of the Law Society that the appellant had by the composition admitted to having debited the total sum of $64,757 to the firm's "D" accounts in the manner described. Again, paragraph 10 was deleted by the Disciplinary Committee.

By paragraphs 11 and 12 of the Statement of the Case it was alleged by the Law Society that the appellant had tampered with a prosecution witness, one Doris Patricia Lim, an audit assistant of a firm of public accountants, Coopers & Lybrand, who in November 1980 were asked by the appellant to do a special audit of the firm's "C" accounts. During the course of the trial of the six summonses and charges in the District Court in May 1981, it was alleged by this witness in court under oath that the appellant had tried to coach her as to the evidence she should give at the trial.

Paragraph 13 of the Statement of the Case, which was deleted by the Disciplinary Committee, referred to the conviction of the appellant of the one charge under Income Tax Summons No. 51000/81 to which the appellant had pleaded guilty and for which he was fined $5,000. In this instance the appellant had admitted that he had made an incorrect income tax return without reasonable excuse by omitting from the income tax return the profit costs of $85,000 earned in 1971 and to which we had earlier made references when setting out paragraphs 4 and 5 of the Statement of the Case. It should be noted that this offence in respect of which the appellant was convicted did not involve any fraud.

Having set out all the allegations against the appellant in paragraphs 4 to 13 of the Statement of the Case, both paragraphs inclusive, the Law Society by paragraph 14 thereof contended that the appellant was guilty of fraudulent or grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the Act and that, further or alternatively, the appellant was guilty under section 84(2)(h) of the Act of such conduct as would render him liable to be disbarred, struck off the roll of the court, suspended from practice or censured if he had been a barrister or solicitor in England, due regard being had to the fact that the two professions are fused in Singapore.

In paragraph 15 of the Statement of the Case, the Law Society contended that by reason of the conviction of the appellant and by reason of the matters referred to in paragraph 13 thereof, the appellant was convicted of a criminal offence implying a defect of character which makes the appellant unfit for his profession within the meaning of section 84(2)(a) of the Act.

It could not, in our view, be asserted before us that the allegations set out in the Statement of the Case against the appellant are not a fair and accurate summary of the allegations set out in the written information of the Attorney-General and in the accompanying documentary annexures. Nor could it be asserted by the appellant that the Law Society's Statement of the Case against the appellant was not based on the six charges framed by the Law Society of which notice had been duly given to the appellant under section 88(2) of the Act. Accordingly, there can be no suggestion that any allegation outside those contained in the information of the Attorney-General was added to the Statement of the Case against the appellant of which the appellant had no notice when he appeared before the Inquiry Committee, thereby resulting in any failure of natural justice.

What was principally argued on behalf of the appellant, which found favour with the Disciplinary Committee but which was rejected by the High Court, and which was re-asserted before us is that on a correct interpretation of the report of the Inquiry Committee, particularly paragraphs 22, 27 and 28 thereof, the Inquiry Committee had identified and demarcated the area which required a formal investigation by a Disciplinary Committee and that the paragraphs in the Statement of the Case deleted by the Disciplinary Committee pertained to matters which clearly fell outside the area already defined by the Inquiry Committee.

Learned counsel for the appellant, Mr. Jules Sher, in his submission may be said to have divided this argument into two parts. First, he referred to the statutory duties and powers of the Inquiry Committee under sections 86 and 87 of the Act, those of the Council of the Law Society under section 88 of the Act and those of the Disciplinary Committee under sections 90 and 91 of the Act. Under this branch of his submission (and we will elaborate later in this judgment) learned counsel submitted that it is within the province of the Inquiry Committee "to identify the parameters" of the conduct of the appellant which the Inquiry Committee considers should be subjected to a formal investigation by a Disciplinary Committee. Secondly, learned counsel submitted that the Inquiry Committee in its report had demarcated the heart of the matter in such a way that only the matters set out within sub-paragraphs 22(a) to (g) of its report, which we have reproduced in this judgment, were recommended by the Inquiry Committee as the exclusive matters in respect of which there should be a formal investigation by the Disciplinary Committee.

In elaboration of the first part of the argument, learned counsel for the appellant submitted that in the execution of its statutory duties the Inquiry Committee must, *inter alia*, act as a filter mechanism to avoid waste, unnecessary anxiety to a professional man and to sift out frivolous complaints. He submitted that the Inquiry Committee is entitled to demarcate for itself the heart of the matter it is being called upon to inquire. As general propositions these submissions are, in our view, quite unexceptionable. In our view, however, where the Inquiry Committee is inquiring into any matter which, as in this case, contains several distinct and separate complaints against the conduct of an advocate and solicitor, it is plainly open to the Inquiry Committee to report its findings and in its report to deal with the question of the necessity or otherwise of a formal investigation by a Disciplinary Committee in respect of each and every of such distinct and separate complaints comprised in the same matter. In other words, it is open, and indeed, it is the statutory duty of the Inquiry Committee in the appropriate case to state in its report those complaints in any matter it is inquiring in respect of which there should be a formal investigation and those other complaints in the same inquiry of the same matter which do not warrant a formal investigation. It may, of course, not deal with each and every complaint in the matter and report that the entire matter be referred to a formal investigation. This is the plain reading of section 87(6) of the Act. Where in the view of the Inquiry Committee no formal investigation is required, then it is also the mandatory duty of the Inquiry Committee to recommend to the Council either a penalty sufficient and appropriate to the misconduct committed or the dismissal of the complaint.

On any view of the report of the Inquiry Committee in this case, it cannot be said that the Inquiry Committee had recommended that no formal investigation by the Disciplinary Committee was required on any one of the several complaints comprised in the matter into which it had carried out the inquiry. If it had done so, it would have recommended, as statutorily required by section 87(6) of the Act, to the Council of the Law Society the "sufficient and appropriate" penalty or "the dismissal" of any particular complaint in the matter it had inquired into. We accordingly accept the submission of Mr. C.S. Wu, learned counsel for the Law Society, that the Council in this case was not under any restriction evident in the report of the Inquiry Committee when formulating the charges for formal investigation by the Disciplinary Committee.

The second branch of the appellant's submission hinges on the words which we emphasise in paragraph 22 of the report of the Inquiry Committee, namely "The allegations against (the appellant) *which the Committee considered as relevant to a hearing under Section 87 of the Legal Profession Act* are as follows:- . . . " Learned counsel also drew our attention to paragraphs 27 and 28 of the report, submitting that the recommendation of the Inquiry Committee should be read as ending at paragraph 28 so far as the question of a necessity for a formal investigation is concerned. Learned counsel for the Law Society, Mr. C.S. Wu, on the other hand, submitted that the report of the Inquiry Committee must be read as a whole. The

charges which the appellant had compounded and the charge to which he had pleaded guilty in the circumstances described were identified in paragraph 2 of the report. Although they were not referred to in paragraph 22 of the report, Mr. C.S. Wu submitted that it was the Inquiry Committee's manifest intention that the Attorney-General's reference against the appellant should be referred for formal investigation in its entirety. We unreservedly accept this submission as correct. There is no justification at all in truncating the report of the Inquiry Committee in the way suggested on behalf of the appellant.

The next ground of appeal canvassed on behalf of the appellant is this. Mr. Jules Sher submitted that the matters or aspects eliminated by the amendments permitted by the Disciplinary Committee were not matters or information "touching upon the conduct of a solicitor in his professional capacity" within the meaning of those words of qualification appearing in section 86(2) of the Act pursuant to which the reference of the Attorney-General was made. Reliance was placed on the well-known cases such as *Allinson* v. *General Council of Medical Education and Registration,*[3] *In re a Solicitor: ex parte the Law Society*[4] and *The Law Society of Singapore* v. *T. T. Rajah.*[5] It was further submitted that the reference of those aspects extraneous to the professional capacity of the appellant was in the first place invalid and that even if the Inquiry Committee had called for a formal investigation those matters were not properly before the Disciplinary Committee which, at any rate, was quite justified in deleting them from the Statement of the Case.

In answer to these submissions Mr C. S. Wu referred to the statutory duty of the Disciplinary Committee under sections 90 and 93 of the Act.

Section 90 provides:

"90. If the Council determines under section 88 that there should be a formal investigation the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter."

Section 93 provides:

"93. – (1) After hearing and investigating any matter referred to it a Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine –

(a) that no cause of sufficient gravity for disciplinary action exists under section 84;

(b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded; or

(c) that cause of sufficient gravity for disciplinary action exists under that section.

(2) In the event of the Disciplinary Committee making a determination under paragraph (b) or (c) of subsection (1) the Committee may make an order for payment by any party of costs or of such sum as the Committee may consider a reasonable contribution towards costs.

(3) The findings and determination of the Disciplinary Committee under this section shall be drawn up in the form of a report of which –

(a) a copy shall be submitted to the Chief Justice and the Society; and

(b) a copy shall on request be supplied to the advocate and solicitor concerned and to the person who made the application or complaint."

Mr. C.S. Wu submitted that on a plain reading of sections 90 and 93(3) of the Act the Disciplinary Committee had no authority to reduce the charges formulated by the Council of the Law Society and referred to the Disciplinary Committee for investigation. He argued that the decision of the Disciplinary Committee to delete paragraphs 6, 8, 9, 10, 13 and 15 of the Statement of the Case without the consent of the Council of the Law Society amounted to a refusal to determine the questions that it is statutorily obliged to determine. In view of the refusal of the Disciplinary Committee to exercise its jurisdiction, Mr. C.S. Wu argued that the High Court had properly issued the *mandamus* to order the Disciplinary Committee to hear and determine the questions raised in the paragraphs deleted.

On this part of the appellant's argument, the question which arises is whether the Disciplinary Committee had decided that the allegations deleted did not touch on the appellant's conduct "in his professional capacity" or whether the Disciplinary Committee had declined to exercise its jurisdiction and statutory duties to investigate, make its findings and make the crucial determination as to the existence or otherwise of a "cause of sufficient gravity for disciplinary action under section 84" of the Act. In the former situation, *mandamus* will not lie to control or interfere with the decision of the Disciplinary Committee. Any dissatisfaction against any such finding may (and we find it unnecessary to say any more than this) be ventilated by the Attorney-General invoking the appellate process laid down in section 97 of the Act. In the latter situation, *mandamus* must lie.

The answer to the question depends on identifying the distinction between a tribunal having decided on the merits of a case or on a preliminary jurisdictional question. In *R.* v. *Marsham*[6] at p. 375 Lord Halsbury L.C. appeared to suggest that one way to see if a tribunal is declining jurisdiction is to see if it is "declining to enter upon an inquiry on which (it) was bound to enter." Lord Esher, M.R. more directly addressed the distinction in the following terms at p. 378:-

"The distinction between the two is sometimes rather nice; but it is plain that a judge may wrongly refuse to hear evidence upon either of two grounds: one, that even if received the evidence would not prove the subject-matter which the judge was bound to inquire into; the other, that whether the evidence would prove the subject-matter or not, the subject-matter itself was one into which he had no jurisdiction to inquire."

In this case, are the matters set out in paragraphs 6, 8, 9, 10, 13 and 15 of the Statement of the Case so plainly not matters "touching upon the conduct of (the appellant) in his professional capacity" that the reference of the Attorney-General under section 86(1) of the Act was invalid, that the Inquiry Committee ought to have so found or that the Disciplinary Committee, at any rate, as Mr. Jules Sher contended, had properly so found? We do not think so. They are allegations which should be investigated by the Disciplinary Committee. Whether the evidence to be adduced before the Disciplinary Committee will prove the allegations and, if so, whether they will touch on the conduct of the appellant in a professional respect and how the Disciplinary Committee will decide on the question in respect of every allegation whether a cause of sufficient gravity exists or does not exist are all questions for the Disciplinary Committee to decide after they have heard the evidence. Without hearing the evidence they were in no position to decide on any of the questions. Indeed, we do not understand the Disciplinary Committee as having decided that none of the paragraphs deleted, whatever the evidence, could not or would not touch on the conduct of the appellant "in a professional respect." Having said that, we must also say that we do not think we are, in fairness to the appellant, at this threshold stage of the disciplinary proceedings entitled to express any opinion on these questions.

The next argument of the appellant turns on the *locus standi* of the Law Society to apply for *mandamus* in the High Court. It was submitted that the role of the Law Society under the Act was that of an *amicus curiae*, that there are no issues or disputes between the Law Society and the appellant, and that accordingly the Law Society did not have "sufficient interest" to apply for the prerogative remedy of *mandamus*.

What is, and the evolution of, the doctrine of "sufficient interest" for the purposes of founding *locus standi* by an applicant for judicial review were discussed by Lord Wilberforce in *Inland Revenue Commissioners* v. *National Federation of Self-Employed and Small Businesses Ltd.*[7]:

". . . [S]omething more needs to be said about the threshold requirement of 'sufficient interest.' The courts in exercising the power to grant prerogative writs, or, since 1938, prerogative orders, have always reserved the right to be satisfied that the applicant had some genuine *locus standi* to appear before it. This they expressed in different ways. Sometimes it was said, usually in relation to certiorari, that the applicant must be a person aggrieved; or having a particular grievance (*Reg.* v. *Thames Magistrates' Court, Ex parte Greenbaum* (1957) 55 L.G.R. 129); usually in relation to *mandamus*, that he must have a specific legal right (*Reg.* v. *Lewisham Union Guardians* [1897] 1 Q.B. 498 and *Reg.* v. *Russell, Ex parte Beaverbrook Newspapers Ltd.* [1969] 1 Q.B. 342); sometimes that he must have a sufficient interest (*Reg.* v. *Cotham* [1898] 1 Q.B. 802, 804 (*mandamus*), *Ex parte Stott* [1916] 1 K.B. 7 (certiorari). By 1977, when R.S.C., Ord. 53 was introduced, the courts, guided by Lord Parker C.J., in cases where *mandamus* was sought, were moving away from the *Lewisham Union* test of specific right but in *Reg.* v. *Customs and Excise Commissioners, Ex parte Cook* [1970] 1 W.L.R. 450 he had moved to sufficient interest."

What Lord Diplock said on this aspect of the matter appears on p. 639 E/F to G/H as follows:

"In the earlier cases a more restrictive rule for *locus standi* was applied to applications for the writ of *mandamus* than for writs of prohibition or certiorari; and since *mandamus* was the prerogative order sought by the federation in the instant case, your Lordships have been referred to many of them; reliance being placed in particular upon the brief extempore judgment of Wright J. delivered at the end of the last century in *Reg.* v. *Lewisham Union Guardians* [1897] 1 Q.B. 498. He said, at p. 500, that an applicant for a *mandamus* 'must first of all show that he has a legal specific right to ask for the interference of the Court.' The law has not stood still since 1897. By 1977 this was no longer correct, and I have no hesitation in saying that it is inconceivable that *mandamus* would have been refused in the circumstances of that case if it had come before a Divisional Court at any time during the last 20 years."

In our judgment, the Law Society did have the "sufficient interest" and therefore the *locus standi* to apply for *mandamus*. Under section 39(1) of the Act one of the purposes of the Law Society, which found pride of place under the first paragraph (a), is "to maintain and impose the standards of conduct . . . of the legal profession in Singapore." As was decided *In the matter of an Advocate and Solicitor*[1] it is the Council of the Law Society that formulates the charges after the Inquiry

Committee has reported that a formal investigation is necessary. As prescribed by The Advocates and Solicitors (Disciplinary Proceedings) Rules, 1963, the Statement of the Case, from which the paragraphs were deleted, was prepared by Mr. C.S. Wu representing the Council of the Law Society. It is therefore clear that under the scheme of the Act the Law Society has "sufficient interest" to apply for a *mandamus*.

Finally, it was urged on behalf of the appellant that this court in exercise of its discretion should refuse *mandamus*. We are not at all persuaded that we should do so. The Disciplinary Committee must not decline jurisdiction: it must do its several duties under the Act. The appellant must appear and answer the serious charges.

With regard to the name of the respondent in the proceedings here and in the High Court, we would order an amendment. The name of the applicant in the High Court and of the respondent before us should read as "The Law Society of Singapore."

For the reasons set out in this judgment, the appeal is dismissed with costs. We also make the usual consequential order for payment to the Law Society or its solicitors the deposit paid into court as security for its costs.

Appeal dismissed.

Solicitors: *T.Q. Lim & Co.; Donaldson & Burkinshaw.*

CHIANG HONG (PTE.) LTD. v. ONG BOON POK REALTY (PTE.) LTD.

[C.A. (Wee Chong Jin C. J., Kulasekaram & Chua JJ.) May 21, 1984]

[Singapore – Civil Appeal No. 4 of 1982]

Land Law – Sale and purchase agreement – New law restricting sale of property to citizens – Non-citizens and companies to obtain government approval – Effect on agreement – Whether contract could be rescinded.

Contract – Sale and purchase agreement – Side letter – Whether converted agreement into conditional contract.

Housing Developers – Sale and purchase agreement – New law restricting sale of property to citizens – Effect of.

Conveyancing – Sale and purchase agreement – New law restricting sale of property to citizens – Whether contract could be rescinded – Whether plaintiffs had taken all reasonable steps to obtain government approval for them to purchase property.

The facts of this case were briefly as follows. The plaintiffs, a development company, agreed to purchase from the defendants a piece of land at Tanah Merah Kitchil in August 1973. The plaintiffs paid a deposit of $260,000.00 being 10% of the purchase price of $2.6 million. The sale was subject to contract.

On September 10, 1973, the government issued a Statement of Future Restrictions of Ownership of Residential Properties. As from September 11, 1973 only Singapore citizens can purchase residential property without restriction. All permanent residents, non-citizens and companies incorporated in Singapore or abroad will require the written approval of the government to purchase residential property or any vacant land, *etc.* On September 24, 1973, the parties executed the Agreement. The purchase price was reduced to $2.4 million but the deposit remained the same. A "side letter" was written by the plaintiffs' solicitors. The letter stated, "the Agreement for Sale and Purchase is signed on the basis that the government will approve our clients' application to purchase the abovementioned property. In the event the government rejects our clients' application the deposit of $260,000 will be refunded to our clients forthwith. . . "

On September 27, 1973 the plaintiffs' solicitors wrote to the Registrar of Titles seeking approval for the purchase of the said property. The Registrar replied that the plaintiffs' application could not be considered as the Approval Committee had not yet been formed. The Registrar also inquired whether the plaintiffs were interested in altering the Memorandum and Articles of Association of the Company to restrict the entire membership and directorship of the company to only Singapore citizens and also to provide that such alteration shall remain immutable. At first the plaintiffs did consider amending their Memorandum and Articles of Association of the Company but subsequently the plaintiffs did not agree to the suggested amendment of their Memorandum and Articles of Association. On May 16, 1974 the Registrar replied that the case had been referred to the Ministry of National Development. The date for completion of the purchase as provided in Clause 3(3) of the Agreement had lapsed on May 15, 1974. Subsequent correspondence ensued between the parties culminating in the plaintiffs' demand for the refund of $260,000. The defendants counterclaimed against the plaintiffs for damages for breach of the aforesaid agreement. Sinnathuray J. gave judgment for the plaintiffs for $260,000 and dismissed the counterclaim ([1982] 1 M.L.J. 242). The defendants appealed.

The questions before the Court of Appeal were whether the side letter read with the agreement converted the agreement into a conditional contract, and whether the plaintiffs had taken all reasonable steps to obtain government approval for them to purchase the property.

Held: (1) the learned judge was correct in finding that the time fixed for completion of the contract of sale was made the essence of the contract. The condition in this case was a condition of the *Aberfoyle*[1] type;